

# WHEN CAN THEY CONSENT? CHILDREN AND SEXUAL ENCOUNTERS

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# HISTORICAL DEFINITION OF CONSENT

- Family decision
- Tribal custom
- Typically coincided with signs of puberty
  - Menarche
  - Pubarche



# LAW AND CONSENT

- 1<sup>st</sup> recorded law, England, 1275
- Part of the rape law (statute Westminster 1) misdemeanor to "ravish" a "maiden within age," whether with or without her consent
- "within age" interpreted by jurist Sir Edward Coke as the age of marriage, 12 years of age
- 12<sup>th</sup> Century – English law ages 12-14, but accepted consent as “meaningful” if over 7
  - Recorded marriages of 2 and 3 year olds



## LAWS AND CONSENT (CONT'D)

- Early American Colonies – followed British law, more of a “guide”
  - Marriage under 12 commonplace
  - Reports of 4 year olds marrying
- 16<sup>th</sup> century Germany set age of consent at 12 years
- 1791 French law set age at 11 in their constitution
- 1863 raised age to 13



## LAWS AND CONSENT (CONT'D)

- Some European countries set age at 10-12 years, later raised to 13-16 by end of 19<sup>th</sup> C
- English common law set age 10-12
- 1880, United States 10-12
  - Delaware was 7 until 1895
- By 1920, most states raised age to 16-18

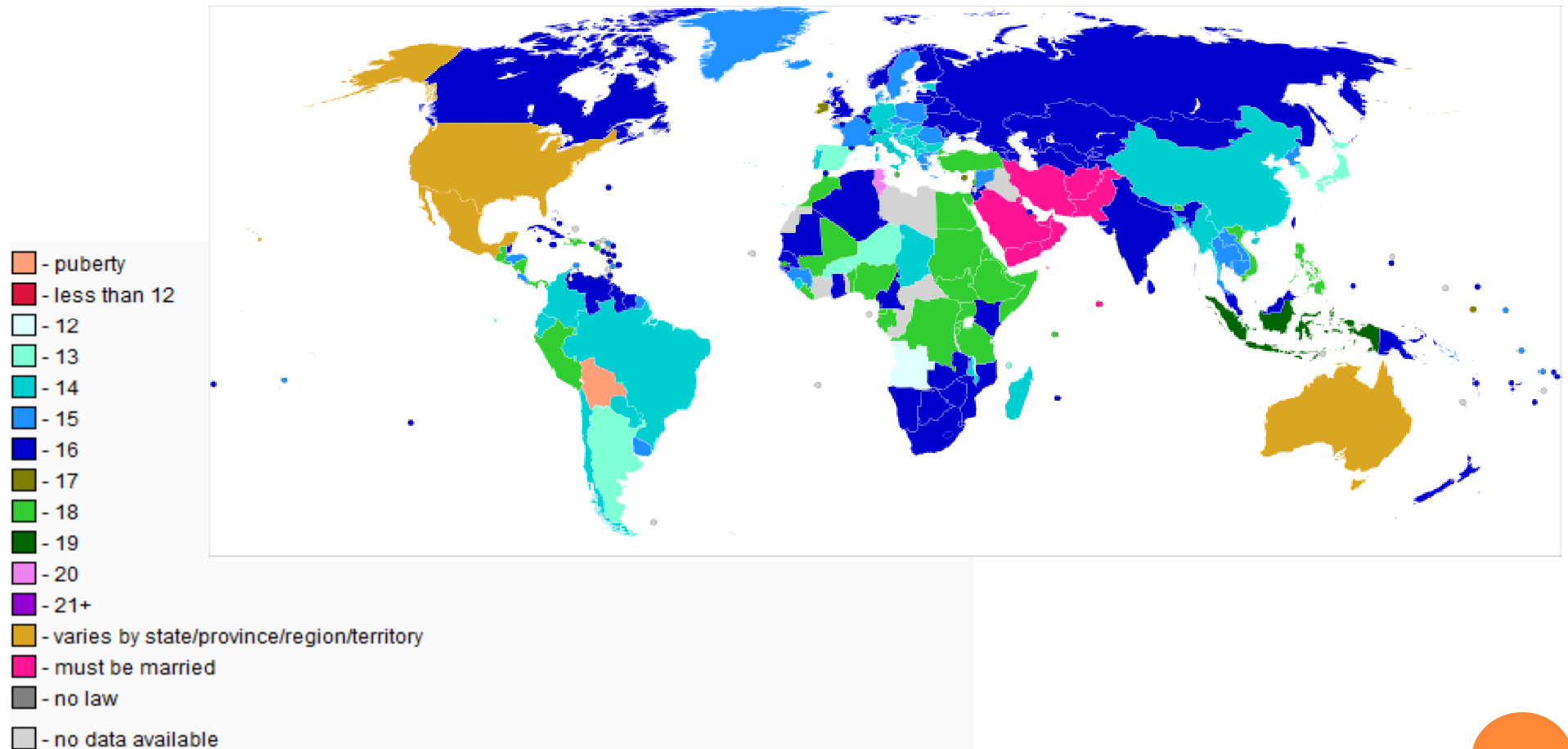


## MODERN DEFINITIONS OF AGE

- Fixed age –UK, US
- Onset of puberty – Yemen (in marriage), Nayarit and Queretaro (Mexico) and Bolivia
- Marriageable age – No age of consent, but consider sexual intercourse outside of marriage illegal (Kuwait)



# GLOBAL TRENDS



## NUANCES

- Homosexual vs. Heterosexual age discrepancies – some jurisdictions outside the US have higher age of consent for homosexual consent
- Gender age differences – Some jurisdictions have different ages of consent for males and females (generally higher age for the males)
- Position of authority – Age of consent is trumped by higher age (typically 18) if with person of authority, like a teacher





## GEORGIA LAW

- **O.C.G.A. § 16-6-4. Child molestation; aggravated child molestation**
- (a) A person commits the offense of child molestation when he or she does any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person.



# GA AGE OF CONSENT

- 16
- Anything less than 16, CANNOT consent
- Any difference in ages above 16, totally legal
  - Some exceptions
  - Person of authority



## CHILD ON CHILD

- Less than 16 years – unable to consent
- Therefore, illegal
- DFCS notification depending on the situation
- DA pursues charges on case by case basis



## CONCERN WITH CHILD ON CHILD

- Are they both victims?
- Why does the “perpetrator” know about these sexual acts?
  - Exposure to porn
  - Victim
  - Normal childhood exploration



# SCENARIOS

- 65 year old man has penile-vaginal sex with 12 year old girl
- Consent issues?
- Crime?
- Which court?



# CLEAR DEFINITION OF CHILD SEXUAL ABUSE

- Child under age of 16 – unable to consent
- Any type of sexual contact from adult is a crime
  - Fondling
  - Genital-genital contact
  - Oral-genital contact
- Superior court case



# SCENARIOS

- 15 year old boyfriend and girlfriend have penile-vaginal sexual intercourse
- Consent issues?
- Crime?
- Which court?



## 2 MINORS

- Technically not able to consent
- Parents could press charges of statutory rape
- DA unlikely to charge – would have to charge both parties
- If anything, charged with delinquency in Juvenile court





# SCENARIOS

- 15 and 17 year old boyfriends have oral sex
- Consent issues?
- Crime?
- Which court?



## ROMEO-JULIET CLAUSE

- Newer law that changes charges associated with sexual encounters with parties 3 years difference and one being above 16
- Not able to consent
- Changes charge to misdemeanor
- Juvenile court



# SCENARIOS

- 14 year old and 5 year old cousins have penile-anal intercourse
- Consent issues?
- Crime?
- Which court?



## ONE OF “7 DEADLY SINS”

- Technically neither able to consent
- If one party <10 years, no need to show intimidation
- If other party 13 years or older, charged as 7 deadly sin
  - Under Senate Bill 440, enacted in 1994, juveniles 13 to 17 are automatically tried as adults for committing murder, rape, armed robbery using a firearm, aggravated child molestation, aggravated sodomy, aggravated sexual battery or voluntary manslaughter
- Superior court, no parole



## THOUGHTS TO CONSIDER

- Specific cases you have had
- How do you handle notifying DFCS?
- Does law enforcement need to be notified?
  - We are all mandated reporters of abuse
  - Not all sexual encounters of children are abuse
  - We are not obligated to uphold the law...that's for the police



# QUESTIONS

